Case Summary

Complaint against Housing Department, Lands Department and Planning Department for shirking responsibility and delay in handling an unauthorized structure

The Complaint

In April 2005, the Complainants complained to this Office against the Housing Department ("HD"), Lands Department ("Lands D") and Planning Department ("Plan D") for "buck-passing" in handling their complaint concerning an unauthorized structure on a lot adjacent to their estate.

Background

2. In August and September 2003, the Complainants wrote to request a District Lands Office and Plan D to take action on the unauthorized structure as it posed a security risk to their estate. Both departments notified HD soon afterwards.

3. The case dragged on for nearly two years. While Plan D exercised control and issued warning under the Town Planning Ordinance ("TPO"), HD and Lands D refrained from taking any action and waited for the owner/occupier of the lot to apply to the Town Planning Board ("TPB") for change of land use or to Lands D for a Short Term Waiver ("STW").

Observations and Opinions

Complaint against HD

4. HD explained that from early 2003 to July 2005, the owner/occupier of the lot had thrice applied to TPB for change of land use and twice asked for review of the applications. As Lands D had also indicated that it would consider regularizing the unauthorized structure by granting a STW, HD did not issue any notice to specify a deadline for demolition. HD insisted that it

was necessary to wait for the final decisions of TPB and Lands D on the owner’s/occupier’s applications before taking action.

5. This Office did not accept HD’s explanation. There were at least two periods (2 April – 22 July 2004 and 26 August 2004 – 5 May 2005) when the owner/occupier did not seek a STW or change of land use. HD had no reason to keep the case pending. It was merely stalling action and the complaint against HD is, therefore, **substantiated**.

<u>Complaint against Lands D</u>

6. Lands D argued that it normally notifies HD to demolish any new unauthorized structure on private lots without licence or STW. Plan D could also institute prosecution for any “unauthorized development” under the TPO. While Lands D could regularize unauthorized structures by STW or take lease enforcement action, it considered the latter not as direct or effective as that by the other departments.

7. Lands D had, therefore, referred the case to HD and Plan D for action. In March 2005, it also included the case in its “Priority List for Lease Enforcement Action”, which meant that action might be taken in “three to five years”.

8. However, this Office considers that during the two periods mentioned in paragraph 5 above, Lands D could well have taken lease enforcement action. Lands D’s inclusion of the case in its “Priority List” in March 2005 was just a pretext for procrastination. The complaint against Lands D is, therefore, **substantiated**.

<u>Complaint against Plan D</u>

9. Plan D is responsible for controlling “unauthorized developments” as defined in the TPO. According to the planning permission granted by TPB in April 2003, part of the subject lot could be used for operating a temporary hardware shop.

10. Meanwhile, according to the Outline Zoning Plan of TPB, the unauthorized structure in question did not constitute an “unauthorized

development", but the storage of construction materials there was a violation.

11. Plan D, therefore, had no statutory authority to take action on the unauthorized structure. However, Plan D warned the occupier and stopped him from storing construction materials on the lot in July 2004. The complaint against Plan D is, therefore, **unsubstantiated**.

Conclusion and Recommendations

12. Overall, the complaint is **partially substantiated**.

13. The Ombudsman recommends that HD and Lands D (with Plan D as necessary):

(a) actively deliberate and take measures to speed up action on unauthorized structures in future, instead of finding excuses and relying on other departments for action;

(b) with reference to (a) above, review and suitably revise their departmental guidelines.

14. We will monitor the progress of the demolition of the unauthorized structure and the implementation of our recommendations.

Office of The Ombudsman
October 2005